

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
PRESTRESS CONCRETE PRODUCTS, INC.,)
Appellant,)
v.)
PUGET SOUND AIR POLLUTION)
CONTROL AGENCY,)
Respondent.)

PCHB No. 81-103

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW & ORDER

This matter, the appeal of \$500 in civil penalties for outdoor burning allegedly in violation of respondent's Regulation I Sections 8.02(3), 8.05, and 9.03(b)(2), came on for hearing before the Pollution Control Hearings Board [Nat W. Washington, David Akana and Gayle Rothrock (presiding)] on March 29, 1982, at Lacey, Washington. Respondent elected a formal hearing pursuant to RCW 43.21B.230. The proceedings were tape recorded.

Appellant appeared by its company president, Henry R. Batte.
Respondent appeared by its attorney Keith D. McGoffin.

1 Witnesses were sworn and testified. Exhibits were examined. From
2 the testimony heard and exhibits examined, the Pollution Control
3 Hearings Board makes these

4 FINDINGS OF FACT

5 I

6 Respondent agency, pursuant to RCW 43.21B.260, has filed with this
7 Board a certified copy of its Regulation I and amendments thereto, of
8 which notice is taken.

9 II

10 In late spring 1981, the appellant, Prestress Concrete Products,
11 Inc., by telephone obtained one of their customary Department of
12 Natural Resources (DNR) open burning permits at the direction of the
13 local fire district (King County Fire Protection District #36),
14 apparently because the business site (Section 15, Township 26, Range 5
15 in Zone B of King County) is under the protection of DNR.
16 Historically, the local fire district's Summit Station has not had
17 counter-top available information concerning respondent's outdoor
18 burning rules and the stations sometimes have volunteers issuing fire
19 permits who do not receive training about those rules. For several
20 years appellant secured these DNR permits to burn natural vegetation
21 and lumber. These activities were classified under permit as burning
22 for "forest fire hazard abatement." Appellant obtained no prior
23 written approval from respondent agency for outdoor burning.

24 III

25 An agreement exists between DNR and respondent agency regarding
26 issuance, monitoring, and enforcement of outdoor fires in the Puget

1 Sound area. There is no evidence of any multi-party agreements
2 between Puget Sound area fire districts, DNR, and PSAPCA.

3 IV

4 In mid-afternoon on June 1, 1981, an inspector on routine patrol
5 for respondent agency saw bluish smoke rising up to 100 feet in the
6 air from a point on the Woodinville-Redmond Road approximately two
7 miles distant. He drove to the site, appellant's place of business,
8 observed two piles of material burning and inquired of two men there
9 whether they had a fire permit. They assured the inspector they had a
10 permit in the office. Upon examination of the permit the inspector
11 noted it was a DNR time-limited permit (expiring July 15, 1981) for
12 burning of natural vegetation and lumber, and untreated wood
13 products,¹ classified as meeting the purpose of forest fire
abatement.

15 V

16 Each fire pile, as described and pictorialized by the inspector,
17 contained old timber, scrap wood and small trees. One pile measured
18 20 feet by 10 feet by 6 feet. Another pile was 15 feet in diameter by
19 5 feet high and contained some small amounts of metal. Each pile was
20 officially observed for 9 or more minutes to be generating smoke which
21 was in excess of 20% opacity. A forklift truck or front-end loader
22 and a water supply was nearby.

23
24 1. Condition #8 of the permit provides:

25 The fire may contain only vegetation, lumber, and
26 other wood products that have not been painted,
treated with preservatives or stains, or soaked with
27 oil or grease.

VI

Respondent's inspector attempted to contact the president of appellant business firm on both June 1st and 2nd, to indicate the apparent violation of three provisions of respondent agency's regulations. He sent six notices of violation to the firm's president on June 2, 1981. Two weeks later respondent agency sent appellant two \$250 Notices and Orders of Civil Penalty for purported violations of Regulation I, Sections 8.02(3), 8.05(1) and 9.03(b). There is no evidence the inspector contacted DNR or the local fire district to report disturbing characteristics of the subject fires.

VII

Appellant has no previous record of violations or fire problems with respondent agency, DNR or the local fire district.

VIII

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings the Board enters these

CONCLUSIONS OF LAW

I

The Legislature of the State of Washington has enacted the following policies on outdoor fires:

It is the policy of the state to achieve and maintain high levels of air quality and to this end to minimize to the greatest extent reasonably possible the burning of outdoor fires. Consistent with this policy, the legislature declares that such fires should be allowed only on a limited basis under strict regulation and close control. (RCW 70.94.740).

Respondent agency has enacted implementing policies and regulations on outdoor burning, in pertinent part as follows:

It shall be unlawful for any person to cause or allow any outdoor fire:

(3) containing garbage, dead animals, asphalt, petroleum products, paints, rubber products, plastics or any substance other than natural vegetation which normally emits dense smoke or obnoxious odors;

(Section 8.02 of respondent's Regulation I)

. . .

It shall be unlawful for any person to cause or allow any outdoor fire other than land clearing burning or residential burning except under the following conditions;

(1) prior written approval has been issued by the Control Officer or Board;

(Section 8.05 of respondent's Regulation I)

. . .

(b) After July 1, 1975, it shall be unlawful for any person to cause or allow the emission of any air contaminant for a period or periods aggregating more than three (3) minutes in any one hour which is:

(1) Darker in shade than that designated as No. 1 (20% density) on the Ringelmann Chart, as published by the United States Bureau of Mines; or

(2) Of such opacity as to obscure an observer's view to a degree equal to or greater than does smoke described in Subsection 9.03(b)(1); provided that, 9.03(b)(2) shall not apply to fuel burning equipment utilizing wood residue when the particulate emission from such equipment is not greater than 0.05 grain per standard cubic foot.

(Section 9.03(b) of Regulation I)

Appellant's burning "some junk which has piled up over the years" in a fire is a violation of respondent's Regulation I, Section 8.02, the Washington State Clean Air Act, and DNR permit condition #8. The smoke from the fires containing some prohibited materials exceeded the opacity limitation of Section 9.03(b)(2) of respondent's Regulation I.

FINAL FINDINGS OF FACT,
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II

The Legislature of the State of Washington has also enacted this policy on permits for outdoor fires.

It shall be the responsibility and duty of the department of natural resources, department of ecology, fire districts and local air pollution control authorities to establish, through regulations, ordinances or policy, a limited burning program for the people of this state, consisting of a one-permit system, until such time as an alternate technology or method of disposing of the organic refuse described in this chapter shall have been developed which is reasonably economical and less harmful to the environment. It is the policy of this state to encourage the fostering and development of such alternate method or technology. (RCW 70.94.745)

(Emphasis added.)

The Washington State Department of Natural Resources and the Puget Sound Air Pollution Control Agency operate under a formal agreement, in fulfillment of 70.94.745, which agreement speaks to cooperation in permit issuance and written and oral contact amongst agencies to resolve enforcement difficulties experienced under the agreement. We conclude respondent's Regulation I Section 8.05 was not violated because appellant did have a permit.

Appellant's fire should have triggered a reference to the limited burning program (if any) or, at least, telephone contact amongst the two parties to the aforementioned agreement and the King County Fire Protection District #36--as opposed to the early issuance of a barrage of violations and two civil penalties.

III

Appellant has no previous record of violations and the civil

1 penalties should be reduced.

2 IV

3 Any Finding of Fact which should be deemed a Conclusion of Law is
4 hereby adopted as such.

5 From these Conclusions the Board enters this

6 ORDER

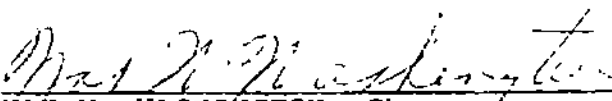
7 Respondent's civil penalties Nos. 5135 and 5136 are affirmed;
8 provided, however that \$400 of the penalty is suspended on condition
9 that appellant not violate respondent's regulations for a period of 18
10 months from the date of issuance of this Order. \$100 of the penalty
11 is affirmed.

12 DATED this 22nd day of April, 1982.

13 POLLUTION CONTROL HEARINGS BOARD

14 
15 GAYLE ROTHROCK, Member

16 
17 DAVID AKANA, Lawyer Member

18 
19 NAT W. WASHINGTON, Chairman